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Paatalo

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UNITED STATES DISTRICT COURT
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NORTHERN CALIFORNIA

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Kimberly Cromwell; William Paatalo,

Case No.:
Assigned to:

Plaintiff,
v.
Certified Forensic Loan Auditors, LLC;
Andrew P. Lehman, and Does 1 through 10
inclusive,
Defendants.

COMPLAINT FOR DAMAGES:

1. **INFRINGEMENT OF COPYRIGHT**
2. **UNJUST ENRICHMENT**
3. **NEGLIGENCE**

JURY TRIAL DEMANDED

Plaintiffs Kimberly Cromwell (hereinafter "Cromwell") and William Paatalo ("Paatalo") (collectively "Plaintiffs") hereby complain, allege, and affirm in their Complaint for Damages:

I. STATEMENT OF CASE

1. CERTIFIED FORENSIC LOAN AUDITORS, LLC through its acts knowingly, intentionally and willfully infringed upon the copyright of Plaintiffs' and has demonstrated a callous, arrogant and blatant disregard for the Plaintiffs' rights.

1 2. Plaintiffs attempted an amicable resolution of Defendants' violation but
 2 Defendants continued with its infringement and refused to cease and desist from
 3 infringing upon Plaintiffs' copyright until threaten with a lawsuit, to which Defendants
 4 laughed.

5 3. Defendants removed the unauthorized publication on June 24, 2016 and Plaintiffs
 6 now seek statutory, general and actual damages for the copyright infringement plus
 7 attorney fees and legal costs.

8 II. VENUE AND JURISDICTION

9 4. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331 because Plaintiffs
 10 seek remedies for copyright infringement under 17 U.S.C. § 504.

11 5. Jurisdiction is also proper in this Court pursuant to 28 U.S.C. § 1332 because there
 12 is complete diversity of Citizenship among the parties to those causes of action and the
 13 amount in controversy exceeds \$75,000. This Court also has supplemental jurisdiction
 14 over Plaintiff's supplemental state law claims under 28 U.S.C. § 1337 because those claims
 15 are substantially related those claims within this Court's jurisdiction.

16 6. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
 17 1391(b)(2) because a substantial part of the acts and omissions giving rise to the claims
 18 asserted herein occurred in this judicial court.

19 III. PARTIES

20 7. Kimberly Cromwell is the co-owner of the eBook, "Pretender Lenders: Table
 21 Funding and Securitization Go Hand in Hand" and holds the copyright to the eBook.
 22 Cromwell is a resident of California.

23 8. William Paatalo is the co-owner of the eBook, "Pretender Lenders: Table Funding
 24 and Securitization Go Hand in Hand" and shares in the profit of the eBook and revenue
 25 from additional eBook and services sales. Paatalo is a resident of Montana.

26 9. Certified Forensic Loan Auditors, LLC ("CFLA") is a California Limited Liability
 27 Corporation that operates a website at <http://certifiedforensicloanauditors.com> and is
 28 based out of Los Angeles, California.

1 10. Andrew P. Lehman ("Lehman") is an officer of CFL and individual who presents
 2 himself as an expert on the area of table funding and securitization.

3 **IV. GENERAL FACTS AND ALLEGATIONS**

4 11. After spending approximately 10 months' research on the issue of table funding,
 5 and approximately 5 years on the issues of securitization, and with the permission of the
 6 managing attorney, Cromwell and Paatalo wrote the eBook for resale through
 7 Cromwell's website, www.infotofightforeclosure.com with referral links from other
 8 websites. This is the exclusive work of Cromwell and Paatalo. See 17 U.S.C. § 106.

9 12. The eBook, "Pretender Lenders: How Table Funding and Securitization Go Hand
 10 in Hand" ("eBook") is clearly marked as being copyrighted with the following disclosure:

11 © Copyrighted material. All rights are preserved. Copyright by Kimberly Simonee
 12 Cromwell, December 2015. No copying, posting on the Internet or forwarding of
 13 document is allowed without expressed, written permission of Kimberly Simonee
 14 Cromwell. (See Exhibit 1, p.V, under Legal Disclaimer, a true and correct copy of the
 15 copyright notice).

16 13. On December 10, 2015 the eBook was offered for resale at the price of \$39.99
 17 through the www.infotofightforeclosure.com website, with links from Paatalo's website
 18 and Livinglies website.

19 14. From December 10, 2015 through December 31, 2016 15 books, along with resale
 20 of other books and services was sold.

21 15. From December 10, 2015 through December 31, 2016 website traffic for
 22 www.infotofightforeclosure.com received a bump of approximately 50% in website
 23 visits.

24 16. Plaintiffs recognized a declining interest in purchase of the eBook, though
 25 Plaintiffs did receive inquiries from individuals who had read the book but not purchased
 26 the book.

1 17. On June 5, 2016 Cromwell discovered that CFLA had published the eBook on
 2 their website, offering it to their website visitors for free. (See Ex. 2, a true and correct
 3 copy of the CFLA unauthorized publication of eBook, attached herein).

4 18. Plaintiffs allege, upon information and belief, the eBook was published as an
 5 article on CFLA's website in February 2016. (See Exh. 2, bottom of each page showing
 6 month and year as 2.16)

7 19. Cromwell nor Paatalo has any record of the book being purchased by CFLA or
 8 Andrew Lehman.

9 20. Neither Cromwell nor Paatalo has given CFLA, its officers, employees or agents
 10 the right to republish or distribute any portion of the book.

11 21. Plaintiffs also found portions of the book presented by Lehman on his LinkedIn
 12 Profile in which Lehman presented the findings as his own work without giving proper
 13 reference to the copyrighted material of Cromwell.

14 22. On June 5, 2016 Cromwell sent a CEASE and DESIST notice to "admin" of CLFA,
 15 requesting they cease and desist from violating the copyright and to remove the
 16 unauthorized publication of the eBook from their website and from the LinkedIn profile
 17 of Andrew Lehman. (See Exh. 3, a true and correct copy of the email communications
 18 from "admin" email of CFLA website)

19 23. Defendants' response was they had over 10,000 hits per week, requesting that
 20 the "article" remain on the website.

21 24. Cromwell responded that it was not an "article" but in fact an eBook that was
 22 protected by US Copyright laws and Defendants' unauthorized publication was causing
 23 harm and damages to Plaintiffs; again requesting CFLA to remove the unauthorized
 24 publication of the eBook from their website and social media accounts.

25 25. On June 23, 2016 Cromwell followed up to confirm CFLA had removed the
 26 article, which they had not.

27 26. On June 24, 2016 Ronald H. Freshman ("Freshman") associated attorney for
 28 Cromwell, and attorney for Paatalo, sent a formal CEASE and DESIST letter, dated June

1 23, 2016, via email, and by first class mail. (See Ex. 4, a true and correct copy of the Letter
2 attached herein)

3 27. On June 24, 2016 Cromwell received an email from the email address,
4 sales@certifiedforensicloanauditors.com with a cc to Paatalo, Ronald H. Freshman
5 ("Freshman) and Damion Emholtz. (See Ex. 5, a true and correct copy of the email
6 attached herein).

7 28. The email, identifying Melanie Paree, Administrative Assistant, responded with
8 the following:

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10 The article has been removed. If you have any additional urls that you have
11 found on our site please provide them and they will be removed as well.

12 Please save us your sophomoric threats from your Junior Varsity group!!!

13 You gonna sue us? What damages? the cost of your ebook? \$20? lol

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15 29. Cromwell checked their website after receipt of the email, and it had not been
16 removed.

17 30. Cromwell checked the website again at 3:45pm and the unauthorized publication
18 had been removed.

19 31. Plaintiffs now seek damages for Defendants willfully and knowingly publishing
20 the copyrighted eBook without authorization.

21 32. Defendants know the material to be an eBook, and published the first two
22 paragraphs of the "legal disclaimer" while omitting the copyright portion. (See Exhibit 2,
23 a true and correct copy of Defendant's website, see p.5 of 19).

24 33. Defendants knew the material to be an eBook as it so stated on the unauthorized
25 publication. (See Ex. 2, p.5 of 19, Legal Disclaimer)

26 34. From both responses, the June 5, 2016 and June 24, 2016 from CFLA, it is clear
27 that CFLA does not believe it is required to abide by the United States Copyright laws
28 and has a callous disregard for the work of Plaintiffs, and harm it caused Plaintiffs.

1 35. Plaintiffs allege that CFLA and Andrew Lehman have knowingly, with a willful
 2 disregard to the rights of Plaintiffs, infringed upon Plaintiffs' copyright. See 17 U.S.C. §
 3 501(a) and (b).

- 4 36. Plaintiffs seek actual damages under 17 U.S.C. § 504 for the following:
- 5 a. Cromwell bills at \$150 per hour for research and writing. Cromwell spent
 in excess of 200 hours researching the eBook, for a total of \$30,000.
- 6 b. Paatalo bills at \$150 per hour for research and writing. Paatalo spend in
 excess of 200 hours researching this eBook, for a total of \$30,000.
- 7 c. Estimated loss of revenue is \$560.00 per month in books sales, at the
 amount of \$2,800 and accruing;
- 8 d. Estimated loss of revenue from services is \$25,000, to be proven at trial.
- 9 e. Total damages sought: \$87,800 plus to be proven at trial.

10 37. Plaintiffs seek statutory damages in the amount of up to \$150,000 as allowed
 11 under 17 U.S.C. § 504 for reason that Defendants have willfully and with a total disregard
 12 to the harm and damages being incurred by Plaintiffs from Defendants' acts, continued
 13 with the infringement after being noticed of the infringement.

14 38. Plaintiffs seek attorney fees and costs as allowed under 17 U.S.C. § 505.

15 39. Plaintiffs allege this is especially egregious because Andrew Lehman claims to
 16 hold Juris Doctorate, and CFLA claims to be the founded by a "group of foreclosure
 17 defense attorneys" and should know the law. (See Ex. 2, p.18)

21 **CAUSE OF ACTION ONE: INFRINGEMENT OF COPYRIGHT**

22 40. Plaintiffs hereby incorporate by reference the allegations in each preceding and
 23 following paragraphs as through fully set forth herein.

24 41. Cromwell has the sole copyright on the eBook, which is undisputed.

25 42. Plaintiffs allege Defendants have violated Cromwell's copyright as to 17 U.S.C. §
 26 106.

27 43. Cromwell and Paatalo wrote the eBook for commercial resell and for profit,
 28 investing over \$60,000 of their own time; and additional time from attorneys.

1 44. Paatalo is part owner of the eBook even though the copyright is held by
 2 Cromwell.

3 45. The eBook holds the layman opinions of Cromwell and Paatalo, in which
 4 Plaintiffs invested their time in research and understanding the issues and is considered
 5 a creative work.

6 46. Plaintiffs allege that CFLA has used over 50% of the self-published book in its
 7 unauthorized publication on its website, and a smaller portion by Andrew Lehman in his
 8 Linkedin Profile.

9 47. Plaintiffs allege CFLA was notified of its infringement but it continued to do so,
 10 both with its own website, through Andrew Lehman's Linkedin Account and CFLA'
 11 Facebook account to the harm and detriment of Plaintiffs.

12 48. Plaintiffs suggested to CFLA that the unauthorized publication be replaced with
 13 an article from Cromwell and Paatalo, then linking visitors to Cromwell's website in
 14 which CFLA could benefit from commissions on the sale, but CFLA instead, left the
 15 unauthorized publication on its website until served with the CEASE and DESIST letter
 16 from Plaintiffs' attorney.

17 49. Plaintiffs allege this is because the article attracts interested visitors for auditing
 18 services, in which Paatalo and CFLA are competitors.

19 50. Cromwell and Paatalo share in the proceeds from the eBook and both benefit from
 20 additional product and service sales resulting from individuals purchasing the eBook.

21 51. Plaintiffs allege there is no exception upon which CFLA can justify its
 22 infringement on Cromwell's copyright.

23 52. Plaintiffs seek to have all copies impounded whether they be electronic or printed
 24 as being held by CFLA or Andrew Lehman, pursuant to 17 U.S.C. § 503.

25 53. Plaintiffs seek remedies to Defendants' infringement for both actual and statutory
 26 damages, and Pursuant to 17 U.S.C. § 501, 504 and 505 all attorney fees and legal costs
 27 for being forced to bring forth this lawsuit to recover damages.

CAUSE OF ACTION TWO: UNJUST ENRICHMENT

54. Plaintiff hereby incorporates by reference the allegations in each preceding and following paragraphs as though fully set forth herein.

55. Through the actions described above, CFLA has been unjustly enriched at the expense of Plaintiffs through unauthorized use of the eBook to increase and benefit from traffic to its website, and for benefit of reselling its services at the expense and harm of Plaintiffs.

56. Under principles of equity and good conscience, CFLA should not be permitted to keep proceeds it has received as a result of the unauthorized publication of the eBook including any benefits it has received from leads resulting from the article; distribution or publication in their cd's, workbooks, or workshops.

57. As a direct and proximate result of CFLA and Andrew Lehman's misconduct as described herein CFLA and Andrew Lehman have been unjustly enriched at Plaintiff's expense.

58. WHEREFORE, Plaintiffs pray for relief as set forth below.

CAUSE OF ACTION THREE: NEGLIGENCE

59. Plaintiffs hereby incorporate by reference the allegations in each preceding and following paragraphs as though fully set forth herein.

60. Defendants had a duty to act in good faith and not to take any acts that would harm Plaintiffs.

61. CFLA, and Andrew Lehman as an executive and owner of CFLA, was notified that it had published a copyrighted eBook on its website in which CFLA was causing harm and damages to Plaintiff's revenue from the ebooks sales. (See Ex. 3)

62. CFLA requested to keep the “article” on their website for the 10,000 weekly visitors, but upon Cromwell’s suggestion it be replaced with an article linking visitors to her website for a legal purchase of the book, CFLA stated it would remove the article on June 5, 2016.

63. Plaintiffs have been harmed by a decline in books sales, and denied revenue opportunities from interested visitors.

64. Plaintiffs seek damages for the loss of books sales; damages for inability to recover their time and investment in the eBook now that it has been published as a free “article”.

65. Plaintiffs seek punitive damages for the reason that CFLA and Andrew Lehman know, or should have known, that its acts are illegal and causes harm but willfully and with intent, continued to publish the eBook without Cromwell or Paatalo's permission.

66. WHEREFORE, Plaintiff prays for relief as set forth below.

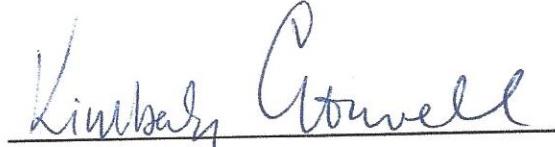
PRAYER

WHEREFORE Plaintiff prays for under 17 U.S.C. § 501, 503, 504, 505:

1. Actual damages of \$87,500.00 or to be proven at trial.
 2. Statutory damages of up to \$150,000 or as deemed fair and equitable by Court.
 3. An order enjoining CFLA from further unauthorized use of the eBook.
 4. Disgorgement of any interest or profits made from the unauthorized publication of the eBook.
 5. Attorney's fees and legal costs;
 6. Punitive damages as CFLA and Andrew Lehman knew its acts were causing tangible financial harm but refused to cease its infringement until served with a CEASE and DESIST letter from Plaintiffs' attorney.
 7. For both pre and post judgment interest at the maximum amount allowable rate on any amounts awarded and;
 8. Any and all such other and further relief that this Court may deem just and proper.

[SIGNATURES TO FOLLOW]

1 Dated: April 26, 2017
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5 Kimberly Cromwell, in pro per
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9 Dated: April 26, 2017
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